

Landmark Education LLC
DBA: Landmark Education

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353 Sacramento Street, Suite 200
San Francisco, CA 94111
(415) 616-2402
2004-316-02444
WHISARD ID: 1378023
EIN: 27-0033035

File set up on the basis of a complaint from a former non exempt salary employee alleging nonpayment of overtime after 40 hours in the work week.

The complaint was substantiated.

The firm had overtime violation.

Main Office: Landmark Education LLC
World Headquarters
353 Sacramento Street, Suite 200
(415) 616-2402

Contact: Mr. Robert Tollen, Attorney
415-544-1024

Tim Cahal, Director of Human Resources
(415) 616-2402

Branches: There are about 21 offices over 50 States in United States and 18 offices worldwide.

NARRATIVE REPORT (FLSA)

PERIOD OF INVESTIGATION: October 14, 2002 to October 13, 2004

PRIOR HISTORY: None

COVERAGE

This investigation initially consisted of the Main Office and one branch at 543 Howard Street, San Francisco, CA 94105. The firm's Headquarters is in San Francisco, and San Francisco District Office is the MODO, therefore this investigation covered all the branches locations within the United States. Assistant District Director 7 was consulted and he concurred.

Subject establishment is in the business of adult education in professional and management developing. The firm has training centers through out the United States and other counties. The company is a Limited Liability Corporation in State of Delaware; the firm has been in business since February 1, 1991. Mr. Harry

Rosenbeng is the Chief Executive Officer of the firm. (See Exhibits C-3 to 66, 67 to 75,)

The establishment ADV during the calendar year of 2002 was

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Employees regularly and recurring handle goods which have moved in interstate commerce such as Panasonic telephone made in Japan, and Konica Copier made in China. All employees are covered under section 3(s)(1)(A) of the FLSA. Therefore, all employees are covered for the investigation period from October 14, 2002 to October 13, 2004. (See Exhibits C-76)

EXEMPTION

13(a)(1) 541.200 is applicable to Audio and Visual Manager Ms. She has been fully in charge of the Audio and Visual Production Department, and she is responsible for all the centers' production within the United States. She does the annual budget proposal for her department, and she could make purchase without prior approval. She received a fix salary over \$455 per week. The discretion and independent judgment which exercised by this employee was not routine work, and it does directly related to management and general business operations under the definition 541.202 & 541.205. (See Exhibits B-2)

Exemption for other employees was not claimed by the employer. The exemptions were not reviewed or challenged by the investigator 7. The employer was provided a copy of Part 541 regulation.

STATUS OF COMPLIANCE

Section 6 MW: No violation disclosed. (See Exhibits B-1 to 14)

The complainant alleging some volunteers working at the branches without getting pay for it. The investigation revealed that those so called volunteers were former students of the Landmark Education. They were at the branches because they would like to participate in the different programs to get experience. There was no obligation and no sign agreement to work or provide any types of services to the firm. A few samples of Assisting Program Information Form were obtained. 7 stated that if someone (volunteers) did not show up as scheduled, then no one would be penalized. The employer did not maintain a list of all the volunteers, and no volunteer was contacted by the Investigator 7, therefore, no determination is made on the volunteers' issue. Based on the above, there is no employee and employer relationship existed, and ADD 7 concurred. (See Exhibits D-15 to 17)

Section 7 OT: OT violation occurred, with back wages of \$187,569.01 found due to 45 employees. (See Exhibits A-1 to 45, B-3, 5 to 12, 14)

Overtime violations occurred because the employer did not pay the non exempt hourly employees for all hours in excess of 40 hours per week at time and a half. Employees only received a fixed salary for all hours worked.

On October 13, 2004, at the initial conference, Director of Human Resources Mr. Timothy Cahal stated that all the non exempt permanent hourly employees were being paid an hourly rate for the first 40 regular hours plus a fixed number of overtime hours per week. Mr. Cahal further stated that regardless the number of hours worked by employees during each work week and they would receive the same wages each pay period (semi-monthly). An hourly employees' list was provided to Investigator [REDACTED] In addition, Mr. Cahal stated that it is very rare that these employees would work the scheduled hours each work week (i.e. 60, 70, or 80 hour per week). Mr. Cahal was advised that those employees were being paid by a fixed salary without receiving time and a half of their regular rate of pay; in order to pay overtime correctly, the employer must determine how many hours worked per week by each employees and then pay the employee according the actual number of regular hours worked at straight time plus the number of hours worked in excess of 40 in a work week at time and a half of the regular rate of pay. Mr. Cahal stated that the firm would make a change as necessary in order to comply in future with the provisions of the FLSA.

There were some temporary hourly employees being paid by an hourly rate with time and a half of the regular rate of pay when employees worked in excess of 40 hours in a work week. Sample payroll records were reviewed, and these temporary hourly employees did receive the correct overtime wages.

All the permanent hourly employees were required to turn in a time sheet each pay period; however the hours worked were not matched with the payroll register. It is because the employees were paid by a fixed amount like a salary. Since the employer used a semi-monthly pay period, the employer agreed to use an estimated number of overtime hours worked per week for the purpose of computing overtime back wages. (See Exhibits A-84, & 87 to 89)

Computation is based on the estimated number of overtime hours worked and the estimated overtime hours are agreed by the employer. The overtime violation was also confirmed by the employees' interview. Computations were made by taking the hours over 40 within a work week (seven consecutive days) and multiplying by 1/2 the regular rate. The regular rate was determined based on Title 29, C.F.R. Part 778.114 (Fixed salary

for fluctuating hours).

Section 11 R/K: No violation disclosed.

The employer did keep a time records for all non exempt hourly employees.

Section 12 CL: No violation disclosed. (See Exhibits B-1)

DISPOSITIONS

A final conference was held with the Director of Human Resource Mr. Timothy Cahal at the establishment on November 29, 2004. General provisions of the FLSA were explained and discussed with special emphasis on MW, OT, R/K, CL, and exemptions. Mr McLens was advised that the firm had overtime violation of Sections 7 of the FLSA, because when the non exempt hourly employees worked more than 40 hours in a work week, and they only received straight time paid (fixed salary).

In regard to overtime violation, Mr. Cahal stated that the firm did not know the overtime pay system was incorrect, and the firm would be implementing a change as of January 1, 2005; all the hourly employees would be paid at time and a half of the regular rate of pay if they worked more than 40 hours in a work week based in the actual hours worked. Mr. Cahal further stated that the firm would agree to comply in future with all the provisions of the FLSA. Mr. Cahal was provided a copy of WH-56 and WH-58.

Mr. Cahal was advised that he should issue all the back wages checks with less legal payroll deductions along with checks stubs to an individual employee on or before December 23, 2004. Mr. Cahal was further advised that he should put down "Employee's name or Wage and Hour Division - Labor" on each of the back wages check. Each employee must sign the WH-58 once the employee received the back wages check. If any employees do not want their back wages check or refuse to sign the WH-58 receipt form, then the employer must forward all the remaining checks to San Francisco District Office no later than December 23, 2004. Mr. Tim Cahal would let Investigator 7 know by Tuesday, December 7, 2004 whether or not the firm is going to pay the back wages.

On December 03, 2003, Mr. Robert Tollen, Attorney for the firm have contacted Investigator 7 via telephone. Mr. Tollen stated that his client would not want to sign the Back Wage Compliance and Payment Agreement because of item number 7 and 9. Mr. Tollen was advised that if his client going pay all the back wages today or the next day, then it would not have any affect because all the back wages is paid; however, if his client agreed to pay then his client do need to sign the WH-56. Mr. Tollen stated that his

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client will agree to pay when his client finishing review of Investigator 7 back wages computation no later than 12/07/2004, and his client would have no problem signing the WH-56. Mr. Tollen further stated that either he or his client would contact Investigator 7 on or before 12/07/2004 for an official answer when to pay.

On December 7, 2004, Mr. Timothy Cahal contacted Investigator via telephone and stated that his firm agreed to pay 45 employees a total of \$187,569.01 in overtime back wages by December 23, 2004. On the same day, an original signed copy of Form WH-56 was received at the San Francisco District Office.

There is no evidence for willful violation. The firm has no prior history of FLSA violation. The firm did not know the overtime pay method was incorrect. Therefore, no civil money penalty is computed.

Publication to ER: Part 778, 541, and FLSA poster

Complainant's name:

[7]

On December 8, 2004, the complainant was contacted via phone and she was advised that there is no back wages due to her. However, the firm did have overtime violation on those non exempt hourly employees, and the firm agreed to pay those who are subjected to overtime back wages.

RECOMMENDATIONS

Since Mr. Timothy Cahal ATCF with all the provisions of the FLSA and agreed to pay 45 employees a total of \$187,569.01 in OT BWS, I recommend the case be closed administratively as soon as all the proof of payment is received. No FLSA civil money penalties is computed because there is no evidence of willful violation of Section 7 and the firm has no prior violation documented. Therefore, a civil money penalty is not warranted.

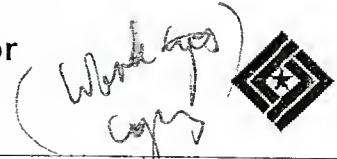
[7]
Investigator _____ Date: December 8, 2004

Summary of Unpaid Wages

U.S. Department of Labor

Employment Standards Administration

Wage and Hour Division

(Office Address) San Francisco District Office
455 Market Street, Suite 800San Francisco, CA 94105-2471
415-744-5590

Investigator:

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Date:

12/02/2004

Employer Fed Tax ID Number

27-0033035

3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
03/20/2004 to 10/16/2004	1	\$3,461.24 ✓
06/14/2003 to 10/16/2004	1	\$9,458.92 ✓
04/19/2003 to 10/16/2004	1	\$9,880.27 ✓
05/31/2003 to 10/16/2004	1	\$5,377.60 ✓
09/13/2003 to 10/16/2004	1	\$5,732.31 ✓
06/26/2004 to 10/16/2004	1	\$1,654.06 ✓
05/22/2004 to 10/16/2004	1	\$1,530.00 ✓
12/20/2003 to 10/16/2004	1	\$4,515.89 ✓
12/21/2002 to 10/16/2004	1	\$7,678.13 ✓
08/14/2004 to 10/16/2004	1	\$873.86 ✓
10/19/2002 to 10/16/2004	1	\$12,103.27 ✓
07/17/2004 to 10/16/2004	1	\$1,438.97 ✓
12/06/2003 to 10/16/2004	1	\$157.56 ✓
02/14/2004 to 10/16/2004	1	\$2,125.00 ✓
08/07/2004 to 10/16/2004	1	\$1,042.48 ✓
07/31/2004 to 10/16/2004	1	\$1,114.67 ✓
	TOTAL	\$187,569.01

* Column 4-Code

FLSA	1
PCA	2
SCA	3
DBRA	4
CWHSAA	5
CCPA	6
FMLA	7

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Employment Standards Administration

Wage and Hour Division

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455 Market Street, Suite 800San Francisco, CA 94105-2471
415-744-5590

Investigator:

7

Date:

12/02/2004

Employer Fed Tax ID Number

27-0033035

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
		08/14/2004 to 10/16/2004	1	\$1,070.65 ✓
		07/24/2004 to 10/16/2004	1	\$560.98 ✓
		06/05/2004 to 10/16/2004	1	\$2,183.08 ✓
		12/06/2003 to 10/16/2004	1	\$4,544.48 ✓
		09/18/2004 to 10/16/2004	1	\$351.39 ✓
		03/15/2003 to 10/16/2004	1	\$10,064.02 ✓
		10/18/2003 to 10/16/2004	1	\$5,590.60 ✓
		11/16/2002 to 10/16/2004	1	\$12,462.13 ✓
		08/16/2003 to 10/16/2004	1	\$4,555.87 ✓
		09/18/2004 to 10/16/2004	1	\$449.78 ✓
		08/07/2004 to 10/16/2004	1	\$943.96 ✓
		10/19/2002 to 10/16/2004	1	\$9,757.89 ✓
		09/04/2004 to 10/16/2004	1	\$816.33 ✓
		04/19/2003 to 10/16/2004	1	\$3,467.40 ✓
		10/19/2002 to 10/16/2004	1	\$10,197.28 ✓
		07/31/2004 to 10/16/2004	1	\$832.44 ✓
		TOTAL		\$187,569.01
	200			* Column 4-Code
				FLSA 1
				PCA 2
				SCA 3
				DBRA 4
				CWHSAA 5
				CCPA 6
				FMLA 7

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U.S. Department of Labor

Employment Standards Administration

Wage and Hour Division

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455 Market Street, Suite 800

San Francisco, CA 94105-2471
415-744-5590

Investigator:

Date:

12/02/2004

Employer Fed Tax ID Number

27-0033035

* Column 4 Code

EISA 1

PESA PCA

SCA 3
BBDA 4

DBRA 4
CWHSSA 5

CCPA 6

FMLA 7